NO. 45588-9

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JENNIFER LYNN MOTHERSHEAD, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Linda CJ Lee

No. 12-1-01509-2

BRIEF OF RESPONDENT

MARK LINDQUIST
Prosecuting Attorney

By
JASON RUYF
Deputy Prosecuting Attorney
WSB # 38725

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

Table of Authorities

State Cases

Federal and Other Jurisdictions

Statutes

Rules and Regulations

Other Authorities

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Has defendant failed to prove the open court excusal of several potential jurors for cause and based on written peremptory challenges violated the public trial right?

2. Did the trial court properly deny defendant's motion to suppress the bleach infused medicine she put in her daughter's eyes since it was K.M.'s property when medical responders retrieved it from K.M.'s hospital room to treat her urgent condition?

3. Was defendant's speculative other suspect evidence appropriately excluded since she failed to establish the foundation for admissibility?

4. Did the trial court properly limit defendant's character evidence to reputation for pertinent traits in a neutral community?

5. Has defendant failed to prove prejudicial error resulted from the court's discretionary curtailment of her effort to elicit her out of court statements without an exception to the hearsay rule?

6. Did the trial court correctly refrain from instructing on third degree child assault when it was not committed to the exclusion of the charged first degree child assault?

7. Was it proper for the jury to receive a reasonable doubt instruction containing the approved "abiding belief" language?

8. Has defendant failed to prove the prosecutor committed misconduct in summation by arguing inferences from defendant's testimony and the court's instruction on circumstantial evidence?

9. Is defendant's 480 month exceptional sentence a discerning response to deplorable cruelty visited upon a particularly vulnerable infant through a shocking abuse of her position of trust?

10. Are all children properly protected from being contacted by defendant after she proved herself to be a danger to all children?

B. STATEMENT OF THE CASE.

1. Procedure.

Defendant was charged in the alternative with first degree child assault for putting bleach infused medicine in her infant daughter's eyes over the course of several months. CP 4-5, 9-11. Each alternative was aggravated by the exploitation of defendant's position of trust to subject a particularly vulnerable victim to deliberate cruelty. CP 10 (RCW 9.94A.535(3)(n), (3)(a), (3)(b); RCW 10.99.020. The Honorable Linda CJ Lee presided over *voir dire*, preliminary motions, trial, and sentencing. *E.g.* RP (8/21) 6-9; (9/9) 17-18, 21; (9/11) 4; RP (11/15) 18; CP 198-203 (CrR 3.6 FFCL); 204-206 (CrR 3.5 FFCL). Defendant was proven to be guilty as charged. *E.g.*, CP 360-72;[1] RP (10/3) 2-5, 16-19; (11/15) 18-19;

[1] CP above 358 estimated based on State's supplemental designation.

CP 159-63, 170-171, 173, 175, 195-97. Her notice of appeal was timely filed, and followed by 88 pages of briefing that challenges a vast array of rulings in addition to three of the prosecutor's closing remarks.

2. Facts

K.M. was born February 20, 2010. RP (9/30) 7. She spent her first few months with her father Cody[2] Mothershead and her mother (defendant). *Id.* Her parents separated when she was about a year old. RP (9/30) 9, 10. She was a healthy baby prior to the separation. *See* RP (9/18) 68; (9/26) 111-12, 119; (10/1) 57, 78. Defendant took K.M. to live with Matthew and Courtney Bowie in March, 2011, where defendant pursued a protracted affair with Matthew while Courtney worked as a teacher. RP (9/23) 118-119, 126-28, 141; (9/24) 104; (9/30) 8, 10;(9/26) 108-09, 116, 10; (10/1) 56. Defendant eventually became pregnant with Matthew's child. RP (9/23) 118, 126-28, 141; (9/30) 8, 10; (10/1) 56. K.M. remained under defendant's near exclusive supervision on account of defendant's unemployment. RP (9/18) 84; (9/23) 122-23; (9/24) 107, 114; (9/30) 10; (10/1) 47-50, 54, 132-33. Defendant used her position as K.M.'s primary caregiver to restrict Cody's ability to see K.M. when he got time away

[2] Cody Mothershead, Matthew Bowie, and Courtney Bowie (AKA Courtney Valvoda) will be referred to by their first names for the purpose of clarity. No disrespect is intended.

from his work as a math teacher, baseball coach, and middle school equestrian team adviser. RP (9/24) 108; (9/30) 5, 11, 39.

Meanwhile defendant was never asked to contribute to household chores or expenses in the Bowie house. RP (10/1) 137-38. Matthew talked to her about ending the affair. RP (9/23) 130-31. Defendant perceived her presence in the house facilitated the relationship with Matthew. RP (10/1) 134. She wanted to be with him. RP (10/1) 148. The problems with K.M.'s eyes began as Matthew's interest in defendant waned. RP (9/23) 131-32. Courtney subtly encouraged defendant to return home, but did not press the matter out of empathy for K.M.'s apparent illness. RP (9/24) 120-21, 123-24. Defendant understood her ability to remain in the house was tied to K.M.'s condition. RP (10/1) 149.

Defendant first had K.M.'s eye examined by Dr. Merril March 23, 2011. RP (9/26) 108-09, 116. There was obvious left eye irritation. RP (9/26) 110.Testing revealed an oddly shaped diffuse circular abrasion occupying all four quadrants of the left cornea with no evidence of a causal agent. RP (9/26) 110-11, 113. K.M. was referred to Mary Bridge Hospital. RP (9/26) 113. K.M. returned to Dr. Merril March 25, 2011. RP (9/26) 114, 116. Merril was puzzled by K.M.'s continued symptoms. RP (9/26) 114. He arranged for K.M. to be seen by an ophthalmologist at Children's Medical Center in Seattle. RP (9/26) 114. Ophthalmologists

Dettori and Herlihy evaluated K.M. at Seattle Children's March 25, 2011. RP (9/12) 15-16; (9/24) 27, 31, 49. Dettori was "perplexed" by K.M.'s condition. RP (9/12) 18. Herlihy subsequently examined K.M. May 2, 2011. RP (9-24) 49-50. At trial Herlihy opined K.M.'s condition was consistent with someone putting bleach in her eyes. RP (9/24) 47-48. K.M. returned to Dr. Merril March 29, 2011. RP (9/26) 116. Her eyelids bled as the skin peeled off. RP (9/26) 116. The entire left cornea manifested dramatic-generalized trauma. RP (9/26) 127. Merril arranged an emergency ophthalmologist appointment. RP (9/26) 117. Doctor Moore treated K.M. in Seattle Children's emergency room March 29, 2011. RP (9/12) 16-17, 70, 72; Ex. 25. He was also "perplexed" by her condition. RP (9/12) 18.

The problems with K.M.'s eyes persisted. RP (9/24) 107; (9/30) 16; (10/1) 57, 78. Defendant would not let K.M. spend time with her father, stating she "had to administer the eye medication." RP (9/30) 18. When Cody was permitted to visit at least one of K.M.'s eyes was swollen shut, she whimpered and cried and continually buried her head into his chest. RP (9/12) 62; (9/30) 13, 15; (10/1) 72-73. Cody was never allowed to administer the eye medication. RP (9/23) 137-38; (9/30) 19, 22; (10/1) 72-73, 143-44. Defendant became "upset" when Matthew attempted to instruct Cody in the procedure. *Id.*

K.M. grew hysterical when the medicine was applied. RP (9/30) 35. Defendant put the medicine into her eyes approximately four times every day as she "cried" "screamed" and "fought." RP (9/18) 71; (9/23) 137; (9/30) 20l; (10/1) 64, 91, 160. Defendant remained primarily responsible for administering it, but sometimes enlisted Matthew to hold K.M. down as she feebly struggled to protect her eyes. RP (9/23) 23, 134-35. Matthew and Courtney noticed a remarkably unpleasant odor emanated from the medicine, even when the bottle was sealed. RP (9/23) 136-37; (9/24) 117-19, 171, 173. Neither Matthew nor Courtney ever tampered with the medication. RP (9/23) 139; (9/24) 119.

K.M.'s eyes became steadily worse over the course of 12 weeks. RP (9/23) 133; (9/24) 105-07, 109; (10/1) 63-65, 69, 81, 87; Ex. 76-78. Localized redness in one eye progressed to redness and swelling in both eyes, to envelopment with blister like sores encrusted with scabs which wept yellow pus. RP (9/23) 133; (9/24) 52-53, 105-07, 109; (10/1) 63-65, 69, 81, 87; Ex. 7, 76-78. The skin over her eyes thinned so much it would break to the touch. RP (10/1) 64. K.M.'s energy, appetite and weight declined as her suffering increased. RP (9/18) 80; (9/24) 113; (10/1) 69, 165. She started sleeping 22 hours a day only to hide her head to avoid light when she woke. RP (9/18) 71; (9/24) 113; (10/1) 165. The antibiotic

"Tobramycin" was prescribed for her eyes with another antibiotic. RP (9/12) 44-45.

Doctors Dettori and Moore asked Seattle Children's Chief of Ophthalmology, Dr. Weiss, to assist with K.M.'s diagnosis. RP (9/12) 4, 18. Weiss saw K.M. April 11, 2011. RP (9/12) 4, 18. Weiss determined the injuries did not make sense as neither infection nor foreign bodies could account for the collective symptoms, which included injury to the eyelid skin, internal eye covering, and cornea (or K.M.'s "window to the world."). RP (9/24) 60; (9/12) 24-26, 29, 35; (9/26) 19-20, 61. Weiss was also "puzzled." RP (9/12) 23-24. Weiss observed blood vessel growth in K.M.'s cornea in addition to a massive outpouring of "neutrophils" (or white cells which respond to infections or "noxious agents"). RP (9/12) 36-37. Yet "exhaustive" diagnostic evaluation led "nowhere." RP (9/12) 37. Atypical eye diseases were ruled out. RP (9/12) 31-33. As were dermatological factors. RP (9/12) 33; (9/18) 38, 42-43, 53. Consultation with a pediatric infectious disease specialist revealed nothing. RP (9/23) 95-98, 101-02. Although, K.M.'s symptoms seemed to improve slightly while she remained under Seattle Children's care. RP (9/12) 34-35.

Matthew watched K.M. with his own kids on several occasions. RP (9/23) 132-33. On May 11, 2013, Matthew (previously certified as an emergency medical technician) noticed an irregular soft spot on K.M.'s

head while brushing food off K.M. and his son as they sat together in the living room with Matthew's other child. RP (9/23) 139, 163, 168-69; (9/24) 125. Matthew immediately brought the issue to his wife's attention, who in turn alerted defendant. RP (9/23) 139-140; (10/1) 111-12. K.M. was taken to the doctor the next morning. RP (9/23) 140. A CAT scan "showed a very large bleed along the entire right portion of her brain, which w[as] a life threatening problem" "reach[ing] the point where it was ... pushing the brain off to the other side." RP(9/19) 112-13. She was airlifted to Harborview May 12, 2011, as it was "the only level one trauma center in the state to deal with th[at] kind of problem." RP (9/19) 112; (9/30) 22-23; (10/1) 119. K.M.'s head injury was discovered shortly after defendant revealed her pregnancy with Matthew's child. RP (9/23) 141-42.

When K.M. arrived treatment providers observed she had "[a] variety of bruises ... mostly on her back, some on her arm, a little unusual in position... on ... location[s] [one] wouldn't typically see." RP (9/12) 57; (9/18) 73-75, 127-28; (9/19) 115; (9/23) 25-26; Ex. 12-19, 70-71. Her eyes were crusted shut. RP (9/23) 113. She grew "hysterical" when attempts to examine her eyes were made. RP (9/23) 113; Ex. 20-22, 24-25. Dr. Sharifi identified the head trauma as "disproportionate to a fall." RP (9/12) 57, 62. There was a complete loss of the right eye's "epithelium" (or the cornea cover), resulting in a loss of transparency in both eyes. RP (9/12) 57-58,

72-73, Ex. 7. It was "the most severe corneal abrasion [one] could have", which caused "a lot of pain." RP (9/12) 58-59.

Courtney drove defendant to Harborview with a cooler containing K.M.'s eye medicine. RP (9/24) 162; (10/1) 119, 121, 123. Defendant was expressionless. RP (9/24) 173. Dr. Kinghorn discussed K.M.'s condition with defendant and Courtney. RP (9/26) 78. Courtney wept. RP (9/26) 80-82, 93. Defendant exhibited little emotion as she repeatedly interrupted Kinghorn's description of K.M.'s traumatic brain injury to talk about equestrian sports. RP (9/26) 80-82, 93.

Pierce County Detective Sergeant Berg responded to Harborview with Detective Anderson to investigate K.M.'s suspicious head trauma. RP (9/18) 60-61. It was "hard [for Berg] to describe how grotesque" K.M.'s eyes appeared when discussing the incident at trial. RP (9/18) 73-74, 78; (9/23) 25; Ex. 20-21, 22-24. Berg was a 27 year veteran of the sheriff's department who supervised the special assault unit at the time and had previously worked as the county's child death investigator. RP (9/18) 56-57. K.M. was taken into protective custody due to the severity of her inadequately explained injuries. RP (9/18) 81-82. Defendant only became argumentative when police would not allow her to administer K.M.'s eye medicine. RP (9/18) 84-85; (9/23) 28. Defendant was so insistently fixated

on administering the medicine she never asked to say good bye to K.M. RP (9/18) 84-85, 148-49; (9/23) 28-29; (10/2) 4-5, 7-8.

Dr. Heistad treated the accumulation of blood in K.M.'s brain May 13 and 14, 2011. RP (9/19) 13-14, 16-17. Treatment team members ordered pH testing of the eye medicine concerned a chemical burn was causing the injuries. RP (9/19) 20. Heistad performed the test. RP (9/19) 20. He retrieved the medicine (which included the "Tobramycin") from the cooler in K.M.'s hospital room upon seeing K.M.'s name on the bottles. RP (9/19) 21-23. As he opened the Tobramycin an eye-burning nausea-inducing odor filled the room, causing nursing staff to respond from a station more than twenty feet away. RP(9/19) 23, 28-29, 34; CP 366 (Ex. 146-A). Antibiotics like Tobramycin only have a mild odor, and would not cause burning to the skin or eyes. RP (9/26) 49. Prior to being issued to defendant, K.M.'s medicine had been accurately compounded in a sterile environment and stored in a secured facility. RP (9/26) 10, 12, 16-21, 33-34, 40-41, 44, 50, 52, 54-55. Seattle Children's "never" received complaints of adverse symptoms associated the medicine issued to K.M. RP (9/26) 53, 58-59. Nor have any of the ingredients been recalled by the manufacturers. RP (9/30) 62.

Dr. Sugar arranged for police to collect the medicine. RP (9/18) 89-90; (9/19) 26. It was properly stored in a secure area. RP (9/18) 90, 94-

98; (9/23) 34, 66. Berg examined it with Anderson May 18, 2011.RP (9/18) 94; (9/23) 34. When Anderson opened the Tobramycin bottle an "overwhelming" noxious chemical odor filled the room. RP (9/18) 98-99, 102; (9/19) 82; (9/23) 38, 74-75. The "acrid" vapor caused Anderson's eyes and the exposed skin between her glove and sleeve to burn. RP (9/18) 98-100; (9/23) 39, 75-76; Ex. 43-44. Police obtained a reference Tobramycin sample from Seattle Children's which likely came from the same batch as K.M.'s Tobramycin. RP (9/18) 104-05; (9/19) 49-50, 57-58; (9/30) 62. Testing conducted by five FDA forensic chemists revealed K.M.'s Tobramycin was only consistent with the sample Tobramycin they purposely spiked with bleach in the laboratory. RP (9/17) 7, 38-40, 43-44, 46-47, 56, 61-62, 86; (9/18) 110, 113; (9/23) 44-45, 132, 154, 165-66. The presence of oxidizers, chloride and chlorate were "a trigger for bleach tampering." RP (9/17) 87. K.M.'s Tobramycin was also brown in color, which differed from the unadulterated clear reference sample until it was spiked with bleach by the FDA chemists. RP (9/17) 36, 56, 180; (9/26) 30, 51-52.

Dr. Weiss learned of K.M.'s admission to Harborview. RP (9/12) 50. She concluded the evidence was consistent with the mother or another "selectively" "instill[ing] some noxious agent" onto K.M.'s eyes to incite her affliction. RP (9/12) 50-51, 54-56, 71. She opined K.M.'s 360 degree

corneal blood vessel growth and "epithelium" thinning was induced by the eyes' "severe toxic reaction to whatever was instilled" indicative of irreversible damage caused by "toxic epitheliopathy" (or a very noxious agent being repeatedly instilled onto her eye). RP (9/12) 60-61. Everything else was ruled out. RP (9/12) 64-65, 69, 74, 112-113, 117-19, 123-24; (9/23) 95-98. K.M. remained "very uncomfortable" most of the time and "whimpered a lot" in spite of pain medication. RP (9/24) 19. Surgical procedures were identified as necessary. RP (9/12) 59-60.

K.M.'s condition improved upon her removal from defendant's custody. RP (9/23) 47-48; (9/26) 117-18; (9/30) 26-29, 32. Ex. 47-52, 208. Two years later a blanket must still be placed over her head any time she ventures into day light. RP (9/30) 28. There is scaring as well as continued concern she will endure permanent blindness. RP (9/26) 118. Both eyes are permanently damaged in a way which will cause lifelong discomfort. RP (9/12) 64-66. The "neovascularization" (or blood vessel coverage) will prevent a successful cornea transplant. RP (9/12) 66. Her vision will never improve beyond "20/260" as it is anticipated to get worse with time. RP (9/12) 67. Despite those disabilities, K.M. is once again happy and able to play. RP (9/30) 29-30.

C. ARGUMENT.

1. DEFENDANT FAILED TO PROVE A PUBLIC TRIAL RIGHT VIOLATION RESULTED FROM THE OPEN COURT EXCUSAL OF POTENTIAL JURORS.

"The public trial right is not absolute ...." ***State v. Sublett***, 176 Wn.2d 58, 71, 292 P.3d70, 292 P.3d 715 (2012) (citing ***Waller v. Georgia***, 467 U.S. 39, 45, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984); ***State v. Leyerle***, 158 Wn. App. 474, 478, 242 P.3d 921 (2010) (citing ***State v. Easterling***, 157 Wn.2d 167, 182, 137 P.3d 825 (2006)). Alleged violations are reviewed *de novo*. *Id.* Whereas, courtroom management decisions which do not effect a courtroom closure are reviewed for an abuse of discretion. ***State v. Lormor***, 172 Wn.2d 85, 93, 95, 257 P.3d 624 (2011); ***In re Personal Restraint of Littlefield***, 133 Wn.2d 39, 46-7, 940 P.2d 1362 (1997); *see also* RCW 2.28.010.

The rules governing the constitutionality of an alleged courtroom closure are not triggered unless "the courtroom is completely and purposefully closed to spectators so ... no one may enter [or] leave." ***Sublett***, 176 Wn.2d at 71; ***State v. Lormor***, 172 Wn.2d 85, 92, 257 P.3d 624 (2011) (citing ***State v. Bone-Club***, 128 Wn.2d 254, 256-57, 906 P.2d 325 (1995) (no spectators allowed)). Defendants bear the burden of producing a record sufficient to prove a closure. ***State v. Koss***, 181 Wn.2d

493, 334 P.3d 1042, 1048 (2014); ***State v. Slert***, __ Wn.2d ___, 334 P.3d 1088, 1093 (2014). Remand for new trial is the remedy for a violation. ***Leyerle***, 158 Wn. App. at 478.

a. Defendant failed to prove open-court excusal of several jurors for cause was error.

Reviewing courts first consider whether the proceeding at issue implicates the public trial right. ***Sublett***, 176 Wn.2d at 71. "Existing case law does not hold ... a defendant's public trial right applies to every component of the broad jury selection process.... Rather, [it] addresses application of the public trial right related only to a specific component of jury selection—i.e., the *voir dire* of prospective jurors who form the venire...." ***State v. Wilson***, 174 Wn. App. 328, 338, 298 P.3d 148 (2013).

Several members of the *venire* were verbally excused for cause in open court during individual questioning. RP (9/9) at 33, 35, 37, 42, 48, 57, 72, 77, 84, 93, 107, 118; RP (9/10) 10, 15, 17, 87, 88. Excusals for cause were likewise entered after general *voir dire*; on appeal, defendant challenges the excusal of *venire* members No. 2, 5, 6, 17, and 67 as a public trial right violation for allegedly being challenged in a sidebar conference. App. 12. Yet defendant has not produced a record of what transpired sidebar. Public questioning of the jurors revealed legitimate hardships. RP (9/11) 17-18, 37-38, 67-69 (Juror No.2, work); RP (9/11) 2, 33, 67-69 (Juror No. 5, work/travel); RP (9/11) 2-3, 27-28, 33-35 (Juror No.6, work); RP (9/11) 2, 32-33 (Juror No.17, school); RP(9/10) 68-74

(Juror No. 67, work). After the sidebar jurors 2, 5, 6, 17, and 67 were asked to remain in the still-open courtroom as the *venire* was released. RP (9/11) 72. Jurors 2, 5, 6, 17, and 67 were then excused in open court. RP (9/11) 74-75 Thereafter members No. 1, 16, 29, and 45 were also excused for cause in open court. RP (9/11) 78, 81, 83. All the excusals were reduced to a public record. CP 327-330.

Division III determined the exercise of for cause challenges does not implicate the public trial right. ***State v. Love***, 176 Wn. App. 911, 919, 309 P.3d 1209 (2013). This Division has yet to decide the issue; however, it need not in this case as defendant's failure to provide a sufficient record of what occurred at sidebar precludes review. *See* ***Koss***, 334 P.3d at 1048. Appellate courts will not infer a trial court violated the constitution from an inadequate record. *See* ***Slert***, 334 P.3d at 1093. What remains clear is that jurors 2, 5, 6, 17, and 67 were questioned in open court before being publically excused for cause; whereupon a record of the rulings was reduced to the publicly available case file. CP 327-30, 359. Defendant's suggestion challenges must have been made at the sidebar is unfounded, for a challenge is not the only way a juror can be dismissed for cause. RCW 2.36.100, .110. The record strongly suggests the court *sua sponte* excused jurors 2, 5, 6, 17, and 67 for the hardships revealed during *voir dire*. They were accordingly akin to administrative dismissals already held not to implicate the public trial right. *See* ***Wilson***, 174 Wn. App. 342-47.

Love's application of the experience and logic test to sidebar discussions preceding open court excusals should be adopted if this Court reaches the merits of defendant's claim. *E.g.*, 176 Wn. App. at 920-21; ***Popoff v. Mott***, 14 Wn.2d 1, 9, 126 P.2d 597 (1942); *see also* ***State v. Marks***, 339 P.3d 196, 198-99 (2014). Much of defendant's criticism of ***Love*** is grounded in the *expressed* concern sidebar conferences conceal race-based challenges. SupApp.8 (citing ***Batson v. Kentucky***, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986); ***Georgia v. McCollum***, 505 U.S. 42, 112 S. Ct. 2348, 120 L. Ed. 2d 33 (1992). But as in ***State v. Filitaula***, __ Wn. App. ___, 339 P.3d 221, 223-224 (2014): the challenged process ensured public access to such information through a transcribed *voir dire* with open court excusals reduced to an easily obtained written record.

b. The public trial right was not violated through the public exchange of written peremptory challenges.

Peremptory challenges may be exercised in writing. ***Filitaula***, 339 P.3d at 223-224 (2014) ***State v. Dunn***, 180 Wn. App. 570, 574, 321 P.3d 1283 (2014); ***Marks***, 339 P.3d at 198-200; ***Love***, 176 Wn. App. 911; ***United States v. Turner***, 558 F.2d 535, 538 (1977); CrR 6.4(e).

Excusals based on the previously uncontested peremptory challenges were also executed in open court pursuant to the publically announced peremptory challenge process; after which, they were reduced to a public record. RP (9/11) 90-92; CP 326-330, 359. RP (9/11) 91-92;

CP 327-30, 359. Defendant's public trial right was neither implicated nor violated.

c. Defendant similarly failed to establish a violation of her right to be present.

A criminal defendant' right to be present at all "critical stages" of trial is not absolute. ***State v. Irby***, 170 Wn.2d 874, 880-81, 246 P.3d 796 (2011). A defendant does not have the right to useless presence. *Id. Voir dire* is a critical stage to which the right to be present attaches, yet the announcement of challenges may not be. *See Id.* at 883–84. Appellate courts review challenges to the right to be present *de novo*. *Id.* at 880.

Defendant failed to prove her right to be present was violated. She has not demonstrated any deprivation in her opportunity to be involved in counsel's use of peremptory challenges or challenges for cause as the mere existence of a sidebar does not evince the absence of power to advise or supersede her counsel. *See* ***Irby***, 170 Wn.2d at 883.

2. THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS THE BLEACH INFUSED EYE MEDICINE SHE PUT IN K.M.'S EYES AS IT WAS K.M.'s PROPERTY WHEN MEDICAL RESPONDERS RETRIEVED IT FROM K.M.'S ROOM TO TREAT HER URGENT CONDITION.

A defendant must demonstrate a reasonable expectation of privacy in an item searched by a state actor to challenge its admissibility. ***State v. Poling***, 128 Wn. App. 659, 667, 116 P.3d 1054 (2005); ***City of Pasco v.***

Shaw, 161 Wn.2d 450, 460, 116 P.3d 1157 (2007) (citing *e.g.*, ***State v. Swenson***, 104 Wn. App. 744, 754, 9 P.3d 933 (2000); ***State v. Walter***, 66 Wn. App. 862, 866, 833 P.2d 440 (1992)). Evidence from such an intrusion is admissible if procured through a warrant requirement exception. ***State v. Hamilton***, 179 Wn. App. 870, 884, 320 P.3d 142 (2014). Since defendant "does not assign error to the factual findings" they are verities. App. 16; ***State v. Hill***, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). The trial court's conclusions of law are reviewed *de novo* while according great significance to conclusions entered following a suppression hearing. ***State v. Collins***, 121 Wn.2d 168, 174, 847 P.2d 919 (1993); ***State v. Mance***, 82 Wn.App. 539, 541, 918 P.2d 527 (1996).

a. Defendant did not preserve a claim K.M.'s treatment providers were state actors by virtue of Harborview employment.

A party cannot change theories of admissibility on appeal. ***State v. Mak***, 105 Wn.2d 692, 718–719, 718 P.2d 407, *overruled on other grounds by*, ***State v. Hill***, 123 Wn.2d 641, 870 P.2d 313 (1994). To preserve a claimed constitutional intrusion based on a medical responder's alleged status as a "state actor" an appellant must have objected on that specific ground in the trial court. *See* ER 103(a)(1); ***State v. Harris***, 154 Wn. App. 87, 94, 224 P.3d 830 (2010); ***DeHaven v. Gant***, 42 Wn. App. 666, 669, 713 P.2d 149 (1986) (citing ***State v. Guloy***, 104 Wn.2d 412, 422, 705 P.2d

1182 (1985), *cert. denied*, 475 U.S. 1020 (1986); ***State v. Boast***, 87 Wn.2d 447, 451, 533 P.2d 1322 (1976). Appellate courts will not generalize specific objections to enable defendants to pursue new theories on appeal. ***DeHaven***, 42 Wn. App. at 670. Where the trial court has not been asked to rule on an issue, there is no ruling, thus no manifest error appearing in the record affecting a constitutional right as is needed to review an untimely challenge to the admissibility of evidence. RAP 2.5(a)(3); ***State v. Roberts***, 158 Wn. App. 174, 181-82, 240 P.3d 1198 (2010), *review granted*, 172 Wn.2d 1017, 262 P.3d 64 (2011) (citing (RAP 2.5(a), (a)(3); ***State v. O' Hara***, 167 Wn.2d 91, 98, 217 P.3d 756 (2010); ***State v. McFarland***, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995)). The manifest constitutional error exception to the general rule is a narrow one. *Id.* It is not meant to allow defendants to obtain a new trial whenever they can identify some constitutional issue not raised before the trial court.

At trial defendant's motion to suppress K.M.'s bleach infused eye medicine was exclusively based on the theory the medical responders who tested K.M.'s medicine and released it to police *became* state actors when they allegedly acted at law enforcement's behest. CP 47-48. She inferred the requisite level of coordination from Dr. Sugar's status as a mandatory reporter who specialized in child abuse. CP 91-92; RP (8/21) 92-94. It was established police had nothing to do with the hospital's examination of

K.M.'s medications or decision to release them to police. RP (8/21) 38-40, 51, 58-59. Accordingly the court ruled Harborview staff's handling of K.M.'s medication was not undertaken at law enforcement's behest, recognizing "there is no evidence to support the argument Dr. Heistad, Dr. Sugar, or any Harborview staff [wa]s a government agent [or] acting as a government agent when they tested the medication." RP (9/9) 16-18; CP 198-202 (relying on ***State v. Smith***, 110 Wn.2d 658, 756 P.2d 722 (1988); ***State v. Link***, 136 Wn. App. 685, 150 P.3d 610 (2007); ***Swenson***, 104 Wn. App. at 744).

Defendant never claimed (as she does on appeal) Heistad and Sugar were state actors based on their involvement in K.M.'s emergency Harborview treatment. *Id.* His new theory of state action is therefore an unpreserved issue, requiring a showing of manifest constitutional error. Such a showing is impossible as the requisite record was never developed. Defendant indirectly acknowledges as much by attempting to augment the record with online information about Harborview. App.p.17. Putting aside the impropriety of looking beyond the record to evidence defendant never presented to the court he accuses of error, proof of Harborview's public ownership does not resolve the question of whether Heistad and Sugar were state actors during K.M.'s Harborview care.

State action depends on the circumstances of a given case. ***Shaw***, 161 Wn.2d at 460 (citing ***State v. Clark***, 48 Wn. App. 850, 856, 743 P.2d 822 (1987); ***State v. Thetford***, 109 Wn.2d 392, 401, 745 P.2d 496 (1987)). Although members of a state hospital's "staff" are government actors[3], the same is not always true of professionals who provide medical service to public hospital patients as independent contractors or consultants. The vast majority of federal courts agree treatment by a non-contract private physician upon referral or on an emergency basis does not satisfy the requirements for state action.[4]

Defendant's failure to raise his new theory of state agency at trial left the record silent on the particulars of the professional relationship Dr. Heistad and Dr. Sugar had with Harborview. Dr. Heistad identified himself as a "pediatrician with Group Health" who completed post-doctorate training through Seattle Children's Hospital, during which he went to different hospitals like Harborview and Bellingham at Peach

---

[3] ***Ferguson v. City of Charleston***, 532 U.S. 67, 76, 121 S. Ct. 1281, 149 L. Ed. 2d 205 (2001).

[4] *See* ***Welch v. Prison Health Services***, Slip Copy No.2:10cv749-MHT (2013 WL 6195791 (M.D.Ala.) (citing ***Sykes v. McPhillips***, 412 F.Supp.2d 197, 202–2014 (N.D.N.Y.2006); ***Katorie v. Dunham***, 108 Fed.Appx. 694, 698–699 (3rd Cir.2004); ***Styles v. McGinnis***, 28 Fed.Appx. 362, 364 (2001); ***Davis v. Dorsey***, 167 F.3d 411, 412–413 (8th Cir.1999); ***Pino v. Higgs***, 75 F.3d 1461, 1466–1467 (10th Cir.1996); ***Ellison v. Garbarino***, 48 F.3d 192, 196–197 (e Cir.1995) (private physician "in no way contractually bound to the state" deemed not a state actor); *see also* ***Shaw***, 161 Wn.2d at 460 (citing ***State v. Clark***, 48 Wn. App. 850, 856, 743 P.2d 822 (1987); ***State v. Thetford***, 109 Wn.2d 392, 401, 745 P.2d 496 (1987); ***State v. Ludvik***, 40 Wn.App. 257, 262–63, 698 P.2d 1064 (1985); ***Walter***, 66 Wn. App. at 866).

Health. RP (8/21) 9-10, 20-23. Heistad did not know whether Sugar was paid by Harborview or Seattle Children's for her work as a child abuse "consultant." RP (8/21) 23-28. Detective Berg knew Sugar to be "a doctor at Children's Hospital." RP (8/21) 41. Seattle Children's Hospital is a private non-profit 501(c)(3) organization.[5] Detective Anderson understood Sugar to be a child abuse "consultant" with Harborview. RP (8/21) 73. This Court cannot reasonably be expected to resolve an unpreserved issue of state agency based on an attenuated inference drawn from Harborview's public ownership when the record evinces a nuanced professional relationship capable qualifying Heistad and Sugar as something other than state actors due to their respective status as trainee and consultant from a different hospital.[6]

b. Defendant is without standing to challenge the admissibility of K.M.'s eye medication.

A defendant seeking to suppress evidence on privacy grounds has the burden to establish the search violated her own privacy rights. ***State v. Hinton***, 179 Wn.2d 862, 869 Fn.2, 319 P.3d 9 (2014); ***State v. Jones***, 68

[5] The State only includes information outside the record to respond to defendant's argument despite the State's position it would be improper for a finding of manifest error to be based on evidence defendant never presented to the trial court.

[6] Although defendant does not clearly challenge the court's actual ruling on appeal, it was nevertheless well supported by the record, for both the challenged hospital personnel and police disavowed any law enforcement involvement in K.M.'s treatment providers' decision to test K.M.'s medication and surrender it to police once potential contamination was perceived. RP (8/21) 16, 21-24, 37-40, 58-61.

Wn. App. 843, 847, 845 P.2d 1358 (1993). ***State v. Cardenas***, 146 Wn.2d 400, 404, 47 P.3d 127, 57 P.3d 1156 (2002); ***State v. Jacobs***, 101 Wn. App. 80, 87, 2 P.3d 974 (2000). Standing is resolved through a two-part inquiry: (1) did the claimant manifest a subjective expectation of privacy in the object of the challenged search; and (2) does society recognize the expectation as reasonable? ***Link***, 136 Wn. App. at 693. A defendant does not have standing to challenge the search of a family member's property based on lawful access to the property on account of the relationship. *See* ***State v. Putman***, 65 Wn. App. 606, 611-12, 829 P.2d 787 (1992); ***State v. Francisco***, 107 Wn. App. 247, 254, 26 P.3d 1008 (2001). Minors may own property through conveyance. 19 WAPRAC § 22.8 (citing *see, e.g.*, ***In re Hudson***, 13 Wn.2d 673, 698, 126 P.2d 765, 777 (1942); ***In re Parentage of L.B.***, 155 Wn.2d 679, 697, 122 P.3d 161 (2005). The natural guardianship of a parent does not extend to the child's property. *See* ***Borst v. Borst***, 41 Wn.2d 642, 650, 251 P.2d 149 (1952); ***In re Guardianship of Karan***, 110 Wn. App. 76, 85, 38 P.3d 396 (2002); ***In re Guardianship of Michelson***, 8 Wn.2d 327, 335, 111 P.2d 1011 (1941); Corpus Juris Secundum, CJS Parent § 290 (2014) (citing ***In re Scott K.***, 24 Cal.3d 395, 405, 595 P.2d 105 (1979)). The state may exercise guardianship over a child when there is probable cause to believe the child is abused or neglected. ***L.B.***, 155 Wn.2d at 697; RCW 26.44.050. When the child

possesses personal property the State is to preserve the property for the child's use. *See Id.*; ***Michelson's Guardianship***, 8 Wn.2d at 335. Standing is reviewed *de novo*. ***Link***, 136 Wn. App. at 692.

The trial court agreed with the State's contention defendant failed to establish standing to challenge the admissibility of K.M.'s medicine. CP 53; RP (8/21) 90-91; (9/9) 20-21; CP 198-99, 202-03. Substantial evidence supports the ruling. The medicine was prescribed to K.M. RP (8/21) 13, 64. Defendant openly described it as "her baby's eye medication" at the hospital. RP (8/21) 37. The medicine was placed in K.M.'s hospital room within a cooler defendant concedes bore K.M.'s name. RP (8/21) 16-17; App. 21 (citing RP (8/21) 11-12, 7). Defendant voluntarily left the hospital without either item. RP (8/21) 38, 58-59. So they were with K.M. when she was taken into protective custody. RP (8/21) 59-60. K.M.'s ownership went factually uncontroverted at the CrR 3.6 hearing. RP (8/21) 84-85. Nothing more than defendant's qualified right to access, possess, and administer K.M.'s medicine was ever shown. There was no evidence defendant maintained an expectation of privacy in K.M.'s belongings when guardianship temporarily passed to the State. Nor should society recognize a reasonably suspected child abuser's privacy interest in such belongings under the circumstances. *See* ***Schmidt v. Mutual Hosp.***

Services, ***Inc***. 832 N.E.2d 977, 981-82 (2005) (citing ***Prince v. Massachusetts***, 321 U.S. 158, 170, 64 S. Ct. 438, 88 L. Ed. 645 (1944)).

c. Defendant forfeited any expectation of privacy in the cooler when she voluntarily left it at the hospital for K.M.'s use.

State actors do not unlawfully intrude into someone's private affairs when they obtain voluntarily abandoned property. ***Hamilton***, 179 Wn. App. at 884 (citing ***State v. Evans***, 159 Wn.2d 402, 884-85, 150 P.3d 105 (2007)); ***State v. Reynalds***, 144 Wn.2d 282, 287, 27 P.3d 200 (2001). Whether a defendant has voluntarily abandoned property is a combination of act and intent. Intent may be inferred from all relevant circumstances. *Id.* at 885 (citing ***State v. Dugas***, 109 Wn. App. 592, 595, 36 P.3d 577 (2001)). "The issue is ... whether the defendant in leaving the property ... relinquished her reasonable expectation of privacy ...." *Id.* Abandonment generally will be found if the defendant has no privacy interest in the area where the item is located. *Id.*

The trial court's ruling defendant relinquished any privacy interest in K.M.'s medication cooler should be affirmed. CP 198-99 (FF), 202-03 (CL); RP (9/9) 18-20. Defendant told police she brought K.M.'s eye medicine to the hospital in a cooler she placed in K.M.'s room. RP (8/21) 37, 57. Defendant did not ask to take the cooler when she left, but it would have been given to her if she had. RP (8/21) 38, 50-51, 58-59, 64-65, 75.

Defendant never requested the cooler thereafter. RP (8/21) 40. Dr. Heistad consequently found it in K.M.'s room where defendant left it unlocked near the working area of a countertop while attempting to examine the medicine's capacity to cause K.M.'s eye trauma. RP (8/21) 11-12, 16-18. Defendant's even recognizes "one might reasonably expect hospital staff to have access to items left in a hospital room for medical and safety purposes...." App. 23; RP (8/21) 94. As one would reasonably anticipate the medicine might be subjected to testing for those purposes. And since the treatment providers she left the medicine with were mandatory reporters, one would reasonably assume they would turn it over to police if it was suspected to be an instrument of child abuse. *See* RCW 26.44.030(1)(a); ***State v. Esquivel***, 132 Wn. App. 316, 327, 132 P.3d 751 (2006) ("People are presumed to know the law ...."); ***State v. McWatters***, 63 Wn. App. 911, 915-16, 822 P.2d 787 (1992).

d. K.M.'s contaminated medication could have been seized under the medical emergency exception.[7]

Medical treatment providers employed by the state may lawfully intrude into constitutionally protected space without a warrant to address medical emergencies. *See* ***State v. Smith***, 177 Wn.2d 533, 540-41, 303

[7] A trial court's decision may be affirmed on any basis, regardless of whether the basis was considered or relied on by the trial court. ***State v. Cervantes***, 169 Wn.App. 428, 433, 282 P.3d 98 (2012)(citing RAP 2.5(a)).

P.3d 1047 (2013); ***State v. Bell***, 43 Wn. App. 319, 322-23, 716 P.2d 973 (1986). The intrusion may be prolonged if necessary to discover the cause to protect against recurrence. *See* ***Bell***, 43 Wn. App. at 322-23, (citing ***Michigan v. Clifford***, 465 U.S. 287, 104 S. Ct. 641, 646, 78 L. Ed. 2d 477 (1984)). Any responder who inadvertently stumbles across contraband may turn it over to police. *Id.*; ***State v. Cahoon***, 59 Wn. App. 606, 609, 799 P.2d 1191 (1990) (citing ***State v. McAlpin***, 36 Wn. App. 707, 714, 677 P.2d 185, *review denied*, 102 Wn.2d 1011 (1984)); ***State v. Angelos***, 86 Wn. App. 253, 254-58, 936 P.2d 52 (1997); ***State v. Cross***, 156 Wn.2d 580, 618-620, 132 P.3d. 80 (2006).

Dr. Heistad's entry into the cooler to test K.M.'s eye medication as well as the hospital's release of the medicine to police once potential contamination was discovered was justified under the medical emergency exception. K.M. arrived at Harborview with "the most severe corneal abrasion [one] could have", which caused her "a lot of pain." RP (9/12) 58-59. Testing of the medicine was ordered to address a concern it was causing the chemical burn. RP (9/19) 20-23. Atypical noxious vapors emanated from the bottle. RP(9/19) 23, 28-29, 34, 49; Ex. 146-A. In light of K.M.'s array of unexplained injuries, it was reasonable for Harborview to believe the medication was evidence of child abuse. A warrant was not required to conduct forensic testing.

3. DEFENDANT'S SPECULATIVE OTHER SUSPECT EVIDENCE WAS PROPERLY EXCLUDED.

Criminal defendants do not have a constitutional right to expose the jury to speculation about the possibility someone else might have committed a charged offense. Admissibility requires a train of facts linking the suspect to the crime beyond mere opportunity motive, threats, and character evidence. ***State v. Franklin***, 180 Wn.2d 371, 379-81, 325 P.3d 159 (2014) (approving ***State v. Downs***, 168 Wn.2d 664, 667, 13 P.2d 1 (1932); ***State v. Kwan***, 174 Wash. 528, 533, 25 P.2d 104 (1933)). "[R]emote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose." *Id.* Evidence establishing nothing more than suspicion another might have committed the crime is inadmissible as its probative value is greatly outweighed by its burden on the judicial system. The decision to exclude other suspect evidence is entitled to great deference pursuant to abuse of discretion review. ***State v. Luvene***, 127 Wn.2d 690, 706–707, 903 P.2d 960 (1995).

The trial court predicated the admissibility of other suspect evidence on defendant's ability to establish a nexus between the alleged other suspect and the crime. RP (9/9) 12, 31. The ruling was applied with the rule of general relevance to prevent defendant from asking Matthew if he possessed a syringe once defendant conceded she could not establish

the relevance of his response. RP (9/23) 170-71; (9/24) 9-12; (10/2) 12-20, 35-37. Defendant was likewise prevented from asking Matthew whether he offered to pay for her to abort a child other than K.M. when defendant failed to establish the foundation required to expose the jury to that information. RP (9/23) 183-86, 190; (9/24) 8-9; (10/2) 12- 20, 35-37.

Defendant presumably challenges those rulings based on a theory the excluded facts increased the likelihood Matthew contaminated K.M.'s medicine. Such a speculative conclusion—predicated as it is on such an illogical array of inferences—cannot support her assignment of error. *See* ***In re Lord***, 123 Wn.2d 296, 316, 868 P.2d 835 (1994); ***State v. Rehak***, 67 Wn. App. 157, 163, 834 P.2d 651 (1992); ***State v. Drummer***, 54 Wn. App. 751, 755, 775 P.2d 981 (1989). There is no evidence-based connection among the three facts. The fact Matthew (a former EMT) purportedly possessed a syringe in a medical aid bag does not implicate him in the adulteration of K.M.'s eye medication as it was never established an instrument like a syringe was used to complete the crime. This is likely why defendant's trial counsel conceded the absence of any evidence to establish the syringe's relevance.

Even less of a connection exists between Matthew's expressed willingness to pay for defendant to terminate the pregnancy resulting from their affair and the contamination of K.M.'s medicine, unless defendant is

erroneously suggesting she was free to argue Matthew's willingness to support a woman's decision to have an abortion makes it more likely he would hurt a child and therefore blind K.M.. Matthew's offer was an exceedingly prejudicial *non sequitur*. *See* ***Kirk v. Wash. State Univ.***, 109 Wn.2d 448, 462, 746 P.2d 285 (1987) (evidence of abortions prejudicial). Defendant also failed to establish how her case was prejudiced by the rulings notwithstanding her ability to argue the speculative possibility another committed the crime in summation and the copious evidence of her guilt. RP (10/2) 17-18; (10/3) 56-57; *See* ***State v. Watt***, 160 Wn.2d 626, 635, 160 P.3d 640 (2007); *Supra*, p. 5-13.

4. THE TRIAL COURT PROPERLY LIMITED DEFENDANT'S CHARACTER EVIDENCE TO REPUTATION FOR PERTINENT TRAITS IN A NEUTRAL COMMUNITY.

A criminal defendant does not have a constitutional right to introduce inadmissible character evidence. *See* ***Rehak***, 67 Wn. App. at 162. Evidence of character is generally inadmissible to prove conformity on a particular occasion. ER 404(a). Rule 404(a)(1) permits a defendant to introduce evidence of a pertinent character trait to the crime charged. ***State v. Kelly***, 102 Wn.2d 188, 193-95, 685 P.2d 564 (1984). Rule 405 requires such proof to be made through a witness knowledgeable about the defendant's reputation in the community for the pertinent trait. *See also*

State v. Callahan, 87 Wn. App. 925, 934, 943 P.2d 676 (1997); 5A Karl B. Tegland, Washington Prac.: Evid. sec. 405.2, at 3 (4th ed.1999). Pertinent character traits may not be proved through direct-examination about specific instances of conduct. ER 405(a); ***State v. Stacy***, 181 Wn. App. 553, 565-66, 326 P.3d 136 (2014). And the community from which the opinion is sought must be neutral and general. *See* ***State v. Land***, 121 Wn.2d 494, 500, 851 P.2d 678 (1993) (citing ***State v. Lord***, 117 Wn.2d 829, 874, 822 P.2d 177 (1991); ***State v. Swenson***, 62 Wn.2d 259, 282-83, 382 P.2d 614 (1963)). ***Callahan***, 87 Wn. App. at 935. A witness's personal opinion is not adequate foundation. ***Kelly***, 102 Wn.2d at 195.

The trial court ruled defendant *would be* permitted to adduce her purported reputation for calm demeanor and good parenting within a neutral and generalized community. RP (8/21) 114-19; (9/9) 10, 30. She was prevented from eliciting specific instances of conduct. RP (9/23) 164-67. In the first instance she was precluded from asking Matthew whether "[s]he was excited ... she was going to be a mom" upon learning of K.M.'s conception. RP (9/23) 164. The second followed a State's objection to her asking Matthew if he "ever s[aw] [defendant] lose her temper and strike out in anger" since it called for his observation of specific acts, and because he was not established to be part of a neutral community. RP

(9/23) 164-66. Defendant was allowed to elicit positive aspects of her parenting. RP (9/30) 48.

Defendant was properly precluded from eliciting her specific emotional responses to the prospect of pregnancy and the frustrations of parenting. ***Stacy***, 181 Wn. App. at 566. Neither question called for *reputation* evidence. Exclusion was also warranted since she sought the impression of an individual not a neutral community's representative.

5. THE DISCRETIONARY CURTAILMENT OF DEFENDANT'S EFFORT TO ELICIT HEARSAY WAS NOT PREJUDICIAL ERROR.

A criminal defendant does not have a constitutional right to escape cross-examination by telling her story out-of-court. ***State v. Finch***, 137 Wn.2d 792, 825, 975 P.2d 967 (1999). A ruling grounded in "self-serving hearsay" is appropriately construed as limiting a party's ability to adduce her own statements absent an applicable hearsay exception since they are not admissible statements of a party opponent under ER 801(d)(2). *See* ***State v. Pavlik***, 165 Wn. App. 645, 650-55, 268 P.3d 986 (2011) (citing ***Finch***, 137 Wn.2d at 824-25). "Self-serving" hearsay testimony deprives the State the benefit of testing the credibility of the statements as well as denies the jury an objective basis for weighing the evidence's probative value. *Id.* A trial court enjoys broad discretion over the mode of presenting

evidence. *See* 5D Karl B. Tegland, Wash. Prac.: Courtroom Handbook on Evid. § 611: 1().

Defendant erroneously claims her description of K.M. as "the fighter" and her version of events at Harborview were excluded by the court's curtailment of her effort to elicit her own out-of-court statements about those events. App. 39-40 (citing RP (9/18) 141-44, 148-49; (9/23) 63-65). Defense counsel asked:

> "It was [defendant] who said, 'Yeah, she's known as The Fighter' [referring to K.M.], and those were Jenny's word's right? RP (9/18) 141.
>
> "That was my next question, because she did want to go back in the room and say goodnight and kiss her daughter goodnight, but you told her she couldn't; is that correct? RP (9/18) 149.
>
> "Do you recall [defendant] asking if she could go in to tell her daughter - -[?]" RP (9/23) 63.

Those questions plainly elicited a hearsay response, for they sought defendant's out of court statements to explain K.M.'s unexplained injuries as well as to represent defendant as a concerned parent. Defendant untenably claims her ability to "offer testimony to rebut, modify, or explain topics on which the State opened the door ..." was cut off by the challenged rulings as they merely controlled the means by which the information was ultimately adduced. The fact defendant described K.M. as "the Fighter" to police was established, then argued in defendant's

summation. *E.g.*, RP (9/18) 19, 23, 57, 62; RP (10/3) 49-50. She was likewise permitted to adduce—through her own testimony—her alleged request to say good night to K.M.. An opportunity to cross-examine the officers called in impeach that testimony was extended to defendant before the significance of the event was argued to the jury. *E.g.*, RP (10/1) 125-126, 129; (10/2) 4-10; (10-3) 36, 77-78. The record reveals the trial court merely exercised its ER 611 authority to curtail the means by which it afforded defendant a reasonable opportunity to present her version of events.

6. THE TRIAL COURT CORRECTLY REFRAINED FROM INSTRUCTING ON THIRD DEGREE CHILD ASSAULT BECAUSE THAT OFFENSE WAS NOT COMMITTED TO THE EXCLUSION OF THE CHARGED FIRST DEGREE CHILD ASSAULT.

An instruction on an inferior degree offense should not be given unless:

> (1) the statutes for both the charged offense as well as the proposed inferior degree offense proscribe but one offense; (2) the information charges an offense divided into degrees, and the proposed offense is an inferior degree of the charged offense; and (3) there is evidence the defendant only committed the inferior offense. ***Fernandez-Medina***, 141 Wn.2d 448, 454, 6 P.3d 1150 (2000); RCW 10.61.003.

Defendant was charged with three alternative means of perpetrating first degree child assault against her infant daughter. CP 9-10

(RCW 9A.36.120(1)(b)(i), (ii)(A), (ii)(B). Her request for a third degree child assault instruction was denied. RP (10/1) 175-176; RP (10/2) 20-23, 31, 37-39, 42-53; RP (10/3) 4-8.[8]

The State concedes the legal prong of the lesser-degree test is satisfied, for each degree of child assault articulates various means of committing assault upon a child. *See* ***State v. Foster***, 91 Wn.2d 466, 472, 589 P.2d 798 (1979). The trial court nevertheless properly refrained from giving the third degree child assault instruction after accurately applying the factual component test. Entitlement to a lesser degree instruction requires a more particularized factual showing than required for other jury instructions since the evidence must raise an inference only the inferior degree offense was committed to the exclusion of the charged offense. *Id.* at 455. The evidence is to be reviewed most favorably to the party who requested the instruction. *Id.*

One is guilty of third degree child assault if one is eighteen years of age or older and the child is under the age of thirteen and one commits the crime of third degree assault as defined in RCW 9A.36.031(1)(d) or (f) against a child. RCW 9A.36.140(1). A person is guilty of third degree assault under RCW 9A.36.031(1)(d) when:

---

[8] Defendant strategically withdrew her request for a second degree child assault instruction to avoid a compromised verdict despite the court's willingness to instruct on that offense. RP (10/2) 21-26, 31, 33; (10/3) 8.

> With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm[.]"

A person commits the offense under RCW 9A.36.031(1)(f) when:

> "With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering[.]"

One is criminally negligent or acts with criminal negligence when:

> "he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care ... a reasonable person would exercise in the same situation." RCW 9A.08.010(d).

There is no evidence to support defendant assaulted K.M. through criminal negligence. She only administered eye medicine obtained from a pharmacy pursuant to prescriptions issued by board certified specialists. *E.g.*, RP (9/12) 4, 15-18; (9/24) 27, 31, 49; (9/26) 108-10, 113-114, 116. There is no evidence defendant negligently persisted in administering a medicine contaminated by another. K.M.'s medications were compounded in a sterile (bleach-free) environment from unadulterated substances. RP (9/17) 36, 56, 180; (9/26) 10, 12, 16-21, 30, 33-34, 40-41, 44, 50, 51-55, 58-59. So the bleach was intentionally added to the medications once they were issued to defendant. None of the people with theoretical access to the medicine were responsible for the contamination. *E.g.*, (9/23) 137-39; 9/24) 119; (9/30) 19, 22; (10/1) 72-73, 143-44. Whereas defendant never directly denied responsibility during her testimony. Meanwhile the record

is replete with evidence she intentionally instilled the bleach into K.M.'s eyes over a 12 week period when she retained near exclusive control over K.M., her eye medicine, and its administration. *E.g.*, RP (9/18) 71, 84; (9/23) 23, 122-23, 134-35, 137-39; (9/24) 47-48 107-08, 114, 119; (9/30) 10-11, 18-19, 22, 201; (10/1) 47-50, 54, 64, 91, 132-33, 160.

Defendant's argument to the contrary contains three obvious flaws. It subtly alters the applicable test by claiming it must be shown she committed the assault "with at least criminal negligence." App.33-34. That statement conflates RCW 9A.08.010(2)'s instruction a greater *mens rea* is sufficient to prove a lesser *mens rea* with the requirement evidence support proof of the lesser *mens rea* to the exclusion of the greater. *See* ***Fernandez-Medina***, 141 Wn.2d at 455; ***State v. Daniels***, 56 Wn. App. 646, 650-52,784 P.2d 579 (1990). Defendant starts the clock of the assault when the May 12, 2011, prescription was issued even though the evidence shows corneal abrasions consistent with a chemical burn first manifested in March, 2011. And given the absence of third-party contamination or any negligence on defendant's part it would be immaterial if the offense took place over 10 days instead of 12 weeks. It would have been error to instruct on third degree child assault.

7. THE JURY WAS PROPERLY INSTRUCTED ON THE REASONABLE DOUBT STANDARD THROUGH THE INCLUSION OF THE COURT APPROVED ABIDING BELIEF LANGUAGE.

Washington's traditional abiding-belief instruction has been upheld in several appellate cases. *See* ***State v. Pirtle***, 127 Wn.2d. 628, 904 P.2d 245 (1995); ***State v. Lane***, 56 Wn. App. 286, 299-301, 786 P.2d 277 (1989) (rejecting argument it dilutes the burden of proof); ***State v. Mabry***, 51 Wn. App. 24, 751 P.2d 882 (1988); ***State v. Price***, 33 Wn. App. 472, 655 P.2d 1191 (1982); *see also* ***Victor v. Nebraska***, 511 U.S. 1, 114 S. Ct. 1239, 127 L. Ed. 2d 583 (1994). Former WPIC 4.01 (containing the abiding belief language) and 4.01A (omitting the language) were recently combined since both definitions have become generally accepted. WPIC 4.01 (Comment p. 86)(2008).

Defendant's challenge to the reasonable doubt instruction given in this case should be rejected as meritless. The issue is well settled by precedent, which has not been shown to be to harmful or incorrect. *See* ***State v. Kier***, 164 Wn.2d 798, 804, 194 P.3d 212 (2008). Defendant's reliance on ***Emery***[9] is misplaced as the error that court detected in argument encouraging the jury to "declare the truth" is it supposedly enlisted the jury to "determine what happened" rather than "determine whether the State ... proved the ... offense beyond a reasonable doubt." 174 Wn.2d at 761. The abiding belief language is consistent with ***Emery's***

[9] ***State v. Emery***, 174 Wn.2d 741, 761-62, 278 P.3d 653 (2012).

characterization of the jury's role as it speaks to the moment the burden is met rather than the pronouncement of a discovered truth.

8. DEFENDANT FAILED TO PROVE THE PROSECUTOR COMMITTED MISCONDUCT BY ARGUING INFERENCES FROM DEFENDANT'S TESTIMONY AND DISCUSSING CIRCUMSTANTIAL EVIDENCE.

A defendant bears the burden of establishing the impropriety of the prosecutor's argument and its prejudicial effect. ***State v. Brett***, 126 Wn.2d 136, 175, 892 P.2d 29 (1995) (citing ***State v. Furman***, 122 Wn.2d 440, 455, 858 P.2d 1092 (1993)); *see also* ***State v. Hoffman***, 116 Wn.2d 51, 93-95, 804 P.2d 577 (1991); ***State v. McChristian***, 158 Wn. App. 392, 400, 241 P.3d 468 (2010) (citing ***State v. Reed***, 102 Wn.2d 140, 145, 684 P.2d 699 (1984). If the prosecutor's comment was improper and the defendant made a proper objection, appellate courts consider whether there was a substantial likelihood the comment affected the jury's verdict. *Id.* If the defendant failed to object, defendant must show the comment was so flagrant and ill-intentioned it could not have been cured by a proper instruction. *Id.* "Prejudice occurs where there is a substantial likelihood the misconduct affected the jury's verdict." ***In re Sease***, 140 Wn. App. 66, 81, 201 P.3d 1078 (2009). Allegations of prosecutorial misconduct are reviewed under an abuse of discretion standard in the context of the entire argument, issues in the case, evidence addressed, and

instructions given. ***Brett***, 126 Wn.2d at 175; ***State v. Russell***, 125 Wn.2d 24, 86, 882 P.2d 747 (1994); ***State v. Warren***, 165 Wn.2d 17, 26-28, 195 P.3d 940 (2008)).

a. The prosecutor properly argued inferences from defendant's testimony.

The burden of proof does not insulate a defendant's exculpatory theory from attack; "[o]n the contrary, the evidence supporting a defendant's theory of the case is subject to the same searching examination as the State's evidence." ***State v. Contreras***, 57 Wn. App. 471, 475-76, 788 P.2d 1114 (1990). *Id.* A prosecutor is entitled to argue reasonable inferences while pointing out improbabilities or a lack of evidentiary support for a defense. ***State v. Killingsworth***, 166 Wn. App. 290-92, 269 P.3d 1064, *review denied*, 174 Wn.2d 1007, 278 P.3d 1112 (2012); ***State v. Boehning***, 127 Wn. App. 511, 519, 111 P.3d 899 (2005)). When the evidence contradicts a defendant's testimony, the prosecutor may argue the defendant is lying or unreliable or not credible. ***State v. McKenzie***, 157 Wn.2d 44, 59, 134 P.3d 221 (2006) (citing ***State v. Copeland***, 130 Wn.2d 244, 291–92, 922 P.2d 1304 (1996); ***State v. Berube***, 171 Wn. App. 103, 119, 286 P.3d 402 (2012) (not burden shifting to argue against defendant's credibility based on his unwillingness to identify other witnesses while testifying).

The prosecutor's closing argument marshaled evidence according to the instructions, emphasizing the State's burden on four occasions. *E.g.*, RP (10/3) 10-15, 17-18, 40-41. Witness credibility was similarly treated when the prosecutor explained how the jury's instruction on assessing witness credibility applied with equal force to defendant's testimony, to include how defendant's testimony fell short of denying culpability. RP (10/3) 41-43. There was no objection when this observation was first made. *Id.* Defense counsel responded in closing by criticizing the medical care K.M. received while postulating defendant's conduct was inconsistent with guilt. *E.g.*, RP (10/3) 47-51, 60. In rebuttal, the prosecutor reiterated the burden of proof, challenged defendant's characterizations of the evidence, reminded the jury to follow its instructions, then again recalled the jury to how defendant's testimony fell short of denying culpability. *E.g.*, RP(10/3) 68-73, 75, 78. Defendant's objection was overruled. RP (10/3) 80-81.

Although defendant had a right not to testify, she did not have a right to insulate her testimony from scrutiny. The jurors were properly instructed to evaluate credibility based on a number of factors, including the reasonableness of the witness's statements in the context of the other evidence as well as other factors affecting its belief of the witness. CP 132 (Instr.1). They were also apprised of their capacity to draw reasonable

inferences from circumstantial evidence. CP 135 (Inst. 3). Those admonitions applied to defendant's testimony, which attempted to cast her as the type of person who would not commit the charged offense without ever directly denying responsibility. *E.g.*, RP (10/1) 60-61, 64, 66, 69-70, 73-74, 75, 81, 86, 95, 100-01, 125, 130-131. Such a remarkable omission could be reasonably interpreted by the jury as a linguistic tell communicating defendant's consciousness of guilt. *See* Interrogation and Confessions, John E. Reid et al., 5th Ed., p. 111-12 (2013);[10] ***State v. Barr***, 123 Wn. App. 373, 383-84, 98 P.3d 518 (2004) (testimony regarding Reid technique for detecting deception invaded jury's province); ***Berube***, 171 Wn. App. at 119. It was accordingly proper for the State to call the omission to the jury's attention. The remark was also harmless if error as it could not have affected such well supported verdicts.

[10] Scholars in the field of detecting deception have observed: "When a deceptive subject is asked a question ... he [or she] has essentially four verbal response options from which to choose: deception, evasion, omission, or truth... An omissive response implies non-involvement without the use of words ... The implication is ... the suspect did not engage in the behavior, but no lie is actually being told ... implying noninvolvement without saying it... Deceptive subjects rely extensively on implication during verbal responses. The subject hopes the [examiner] will make unwarranted assumptions about what [he or she] probably meant to say... During a spontaneous interview, deceptive subjects may deny some narrow aspect of the [examiner's] question. It must be remembered ... the deceptive subject knows exactly what the truth is. If he [or she] can truthfully deny some narrow aspect of the crime, thereby implying total innocence, he [or she] will. " 111-13.

b. The unobjected to description of circumstantial evidence did not trivialize the State's burden.

Instruction No. 3 described the difference between direct and circumstantial evidence. CP 134. The challenged argument explicitly recalled the jury to that instruction, not the State's burden of proof (Instruction No. 2):

> "Just as an example of direct versus circumstantial evidence, you bake a batch of brownies and you leave them on your kitchen counter to cool ...Five , ten minutes you come back. Your son is not in the kitchen ... you notice the stack [of brownies] seems smaller ... [your son] has a smudge on his cheek. Remote control's ... sticky ... you didn't see him take anything ... Chocolate on his face ... what's the reasonable inference? Are there other possibilities? There will always be other possibilities. But what's the reasonable conclusion based on what you do have? That your son ate the brownies." RP (10/3) 13.

The prosecutor then explained the necessity of relying on reasonable inferences from circumstantial evidence to decide intangible facts like *mens rea* as well as to overcome information gaps attending the inability to witness an incident. RP (10/3) 13-15. After which the prosecutor again recalled the jurors to Instruction No. 3 to discuss their ability to rely on common sense and experience in drawing those inferences while reminding them the case must be decided based on the evidence and the law. RP (10/3) 15. It is incorrect to characterize the argument as addressing the burden of proof, much less trivializing it.

9. DEFENDANT'S 480 MONTH EXCEPTIONAL SENTENCE IS A DISCERNING RESPONSE TO THE DEPLORABLE CRUELTY SHE VISITED UPON A PARTICULARLY VULNERABLE INFANT THROUGH A CONSCIENCE SHOCKING ABUSE OF HER POSITION OF TRUST.

An exceptional sentence may be imposed if a jury finds beyond a reasonable doubt the defendant's conduct during the commission of the offense manifested deliberate cruelty to the victim; the defendant knew or should have known the victim was particularly vulnerable or incapable of resistance; or the defendant used his or her position of trust to facilitate the offense, and the court finds those facts are substantial and compelling reasons justifying an exceptional sentence. RCW 9.94A.535(3)(a), (b), (n); ***State v. Hale***, 146 Wn. App. 299, 305-09, 189 P.3d 829 (2008). Reviewing courts will uphold a jury's findings unless they are clearly erroneous." *Id.* (citing ***State v. Fowler,*** 145 Wn.2d 400, 405, 38 P.3d 335 (2002)). A trial court's reasons for imposing an exceptional sentence will be upheld if *de novo* review demonstrates them to be substantial and compelling. *Id.*

a. Defendant's extraordinary acts of cruelty against an extremely vulnerable victim were not subsumed within the underlying first degree child assault.

Deliberate cruelty consists of gratuitous violence or other conduct that inflicts physical, psychological, or emotional pain as an end in itself. ***State v. Tili***, 148 Wn.2d 350, 369, 60 P.3d 1192 (2003). Extreme youth is a valid aggravating factor when considering the victim's vulnerability. ***State v. Berube***, 150 Wn.2d 489, 513, 79 P.3d 1144 (2003). Both the deliberate cruelty and particular vulnerability aggravators may support exceptional sentences when the statute for the base offense is specifically aimed at children harmed through a pattern of torture. ***State v. Russell***, 63 Wn. App. 237, 251-53, 848 P.2d 743 (1993) (20 month old infant "clearly particularly vulnerable"); ***State v. Fisher***, 108 Wn.2d 419, 424, 739 P.2d 683 (1987) (5 ½ year old particularly vulnerable). Particularly vulnerable victims are *tragically* capable of being tortured in particularly cruel ways. ***Russell***, 63 Wn. App. at 251-53 (more passive, less violent means of extreme indifference to human life than beating a 20 month old with brass knuckles until the infant's liver ruptures); ***State v. Jennings,*** 106 Wn. App. 532, 554, 24 P.3d 430 (2001) (deliberately cruel means of committing first degree child assault against particularly vulnerable victim).

It is disquieting defendant perceives the trier of fact, or any right thinking adult in this state, incapable of appreciating the particular vulnerability of a 14 month old infant or how the assault K.M. endured is atypical. But, so it goes. The trial court determined the jury's predictable finding of K.M.'s particular vulnerability justified an exceptional sentence since her extreme youth left her completely dependent on defendant for her health, safety, and welfare. CP 196. Justification based on deliberate cruelty was unsurprisingly grounded in defendant's actions in "repeatedly, multiple times a day over the period of weeks, placing a toxic substance into K.M.'s eyes" "without regard for K.M.'s obvious pain and injury" "causing permanent damage to K.M.'s vision." CP 196. Those findings are well supported. (pg. 3-13 *supra*). And such findings justify the imposition of an exceptional sentence. *See* ***Russell***, 63 Wn. App. at 251-53.

b. The void for vagueness doctrine is inapplicable.

Sentencing guideline statutes addressing aggravating factors are not subject to the vagueness analysis since the due process considerations underlying the void-for-vagueness doctrine have no application. ***State v. Baldwin***, 150 Wn.2d 448, 459-61, 78 P.3d 1005 (2003). Aggravating circumstances do not define conduct, permit arbitrary arrest and criminal prosecution, inform the public of penalties attached to criminal conduct,

vary the statutory maximum or minimum penalties assigned to illegal conduct, or set penalties. As nothing in the statutes requires a certain outcome they do not create a constitutionally protected liberty interest. *Id.*

Defendant contends ***Baldwin*** has been abrogated by the decisions in ***Apprendi v. New Jersey***[11] and ***Blakely v. Washington***[12]; however, those cases focused on the jury trial right, which is distinct from the vagueness doctrine. ***Baldwin's*** reasoning consequently remains as sound as the decision remains binding.

c. There is no double jeopardy problem.

Alleyne v. United States interprets the Sixth Amendment's jury trial right, not the Fifth Amendment bar to double jeopardy. __ U.S.__, 133 S. Ct. 2151, 2155, 186 L. Ed. 2d 314 (2013); ***State v. Kelley***, 168 Wn.2d 72, 226 P.3d 773 (2010). The case extended ***Apprendi's*** requirement a jury decide factors increasing the penalty for an offense to facts increasing an offense's mandatory minimum sentence. 133 S. Ct. 2155. It did not address jury-decided sentencing aggravators like the one petitioner misapplies it to challenge. *See* ***Kelly***, 168 Wn.2d at 75. The United States Supreme Court and the Washington Supreme Court have held no double jeopardy violation occurs when additional punishment is imposed based on a defendant's use of a firearm during a crime, even

[11] 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).
[12] 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004).

when use of the firearm was an element underlying the offense. ***Kelley***, 168 Wn.2d 78. That continues to be the law. *E.g.*, *Id.*, ***Alleyne***, 133 S. Ct. at 2159-60; ***State v. Larson***, 160 Wn. App. 577, 593, 249 P.3d 669 (2011). The reasoning in those cases applies to defendant's aggravators.

d. Defendant's 480 month exceptional sentence is not clearly excessive.

To determine whether an exceptional sentence is clearly excessive appellate courts ask whether the trial court abused its discretion by relying on an impermissible reason or unsupported facts, or whether the sentence is so long in light of the record it shocks the conscience. ***State v. Halsey***, 140 Wn. App. 313, 324-26, 165 P.3d 409 (2007) (exceptional 720 month sentence for raping a 3 year old not clearly excessive) (citing ***State v. Ferguson***, 142 Wn.2d 631, 651, 15 P.3d 1271 (2001)); ***Jennings***, 106 Wn. App. at 539-41(two consecutive 240 month sentences for abuse of trust and deliberate cruelty during two first degree child assaults against particularly vulnerable infant not clearly excessive); ***State v. Oxborrow***, 106 Wn.2d 525, 535–36, 723 P.2d 1123 (1986) (upholding exceptional sentence 15 times more than the standard range); *see also* ***State v. Branch***, 129 Wn.2d 635, 650, 919 P.2d 1228 (1996) (upheld exceptional sentence 16 times the standard range).

Given the protracted suffering defendant forced K.M. to helplessly endure multiple times a day over the course of several months at the hands of the one person in the world K.M. would have instinctually trusted to protect her; the sheer magnitude of the cruelty it manifested, and undoubtedly will continue to manifest to K.M. as she comes to grips with what her own mother did to her as she grows into her permanent, in all probability increasing, inability to see, a 480 month sentence is not clearly excessive to honor the jury's decision to convict defendant of three aggravating factors.

10. ALL CHILDREN ARE APPROPRIATELY PROTECTED FROM BEING CONTACTED BY DEFENDANT AFTER SHE DEMONSTRATED THE CAPACITY TO SUBJECT HER OWN CHILD TO TWELVE WEEKS OF WANTON TORTURE.

RCW 9.94A.505(8) permits a court to impose crime-related prohibitions as part of any sentence for up to the jurisdictional maximum of the offense. *See also* RCW 9.94A.030(10); ***Warren***, 165 Wn.2d at 32; ***State v. Cortes Aguilar***, 176 Wn. App. 264, 277, 308 P.3d 778 (2013). "Prevention of harm to children is a compelling state interest...." ***Cortes Aguilar***, 176 Wn. App. at 277; ***State v. Corbett***, 158 Wn. App. 576, 598, 242 P.3d 52 (2010) (valid no-contact order prohibiting contact with all minor children).

Defendant does not possess a liberty interest in contact with minors other than her children while permitting her to have contact with her own children already proved too perilous. Anyone capable of so insidiously inflicting such immeasurable cruelty on one's own child poses an unacceptable risk to all children as there is no obvious deterrent to reoffense other than lack of opportunity. Children need to be protected from defendant more than she needs to be in contact with them.

D. CONCLUSION.

Defendant was justly convicted by a properly constituted jury based on admissible evidence that clearly supports her sentence.

DATED: JANUARY 26, 2015

MARK LINDQUIST
Pierce County
Prosecuting Attorney

JASON RUYF
Deputy Prosecuting Attorney
WSB # 38725

Certificate of Service:
The undersigned certifies that on this day she delivered by ~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

1/26/15
Date Signature

PIERCE COUNTY PROSECUTOR

January 26, 2015 - 3:53 PM

Transmittal Letter

Document Uploaded: 3-455889-Respondent's Brief.pdf

Case Name: STATE V. JENNIFER MOTHERSHEAD

Court of Appeals Case Number: 45588-9

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Respondent's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Heather M Johnson - Email: hjohns2@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

WAPOFFICEMAIL@WASHAPP.ORG
THOM@WASHAPP.ORG
MARLA@WASHAPP.ORG